



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 3375-99

10 August 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by Headquarters, Marine Corps dated 6 March and 15 June 2000, copies of which are enclosed.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070  
JAM3  
06 MAR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF [REDACTED] 25  
[REDACTED] U.S. MARINE CORPS

Ref: (a) MCO P1400.32B

1. We are asked to provide an opinion on Petitioner's request to remove from his Official Military Personnel File (OMPF) the record of nonjudicial punishment (NJP) that he received on 3 January 1998. He also requests to be promoted to the rank of gunnery sergeant with a date of rank of 1 January 1998.
2. We recommend that the requested relief be denied. Our analysis follows.
3. Background. Petitioner was selected for promotion by the FY 97 Gunnery Sergeant Selection Board in June 1997. In December 1997, Petitioner became the subject of a Naval Criminal Investigative Service (NCIS) investigation for wrongful appropriation, in violation of Article 121 of the Uniform Code of Military Justice (UCMJ). On 3 January 1998, Petitioner received NJP for making a false official statement, in violation of Article 107, UCMJ. He was awarded forfeiture of \$1004.00 pay per month for 2 months and 21 days of restriction. On 28 January 1998, the Commanding Officer, Marine Heavy Helicopter Squadron 462, Marine Aircraft Group 36, First Marine Aircraft Wing, requested that Petitioner's certificate of appointment be deleted. On 2 April 1998, Petitioner's appointment was revoked by the Commandant of the Marine Corps. Petitioner contends that his NJP was unjust because he was tricked by his chain of command into accepting NJP, specifically, that if he accepted NJP, he would be promoted 6 months after the punishment. He also contends that the decision not to promote him was improper.
4. Analysis
  - a. Petitioner provides no evidence that his NJP was unjust. The Report and Disposition of Offenses (NAVMC 118-12) that records the NJP is correct in form and suggests no irregularity in the proceeding itself.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF [REDACTED]  
[REDACTED] 3 U.S. MARINE CORPS

The punishment imposed was authorized based on the grade of the officer who imposed it, and a review of the record does not indicate that the NJP authority abused his discretion. As such, this argument has no merit.

b. Petitioner provides no evidence that his command suggested, let alone promised, that he would be promoted subsequent to his NJP. Reference (a) provides that a certificate of appointment will not be delivered if the Marine concerned has failed to maintain the high standards of professional and personal performance that led to his selection, as in the case of a Marine who receives NJP. Petitioner was denied his promotion in accordance with regulation, and his argument has no merit.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

*M. W. Fisher, Jr.*

M. W. FISHER, JR.  
Head, Military Law Branch  
Judge Advocate Division



DEPARTMENT OF THE NAVY  
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3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1400/3  
MMPR-2  
15 Jun 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF [REDACTED]  
[REDACTED] USMC

Ref: (a) CO HMH 462 ltr of 1400 S-1 of 28 Jan 98  
(b) CMC ltr 1450/5 MMPR-2 of 2 Apr 98  
(c) MCO 1400.32B paragraph 1201.4b(1) (ENLPROMMAN)

1. [REDACTED] requests that his promotion to gunnery sergeant be effected, based on his selection by the 1997 Gunnery Sergeant Selection Board. He feels that, since his promotion date was scheduled to be 1 January 1998 and nonjudicial punishment (NJP) was imposed on him on 3 January 1998, he should have been promoted to gunnery sergeant.

2. [REDACTED] was selected to gunnery sergeant by the 1997 Gunnery Sergeant Selection Board and was to be promoted on 1 January 1998. However, he was not promoted on that date because he was pending an investigation. As a result of the investigation, he was awarded NJP for violation of Article 107 of the UCMJ. Following the NJP, his Commanding Officer recommended revocation of his promotion to gunnery sergeant; reference (a). On 2 April 1998, the Commandant of the Marine Corps administratively deleted staff sergeant [REDACTED] name from the 1997 Gunnery Sergeant selection list due to his failure to maintain the high standards of personal and professional performance expected of a staff noncommissioned officer. Reference (b) applies.

3. Per reference (c) enlisted Marine promotions are not effective until a promotion warrant is delivered at an appropriate ceremony. We recommend the petition be denied.

A. J. VAN STEENBERGEN  
Head, Enlisted Promotion Section  
Promotion Branch  
By direction of  
The Commandant of the Marine Corps